

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2648 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PURSHOTTAM N THAKKER

Versus

STATE OF GUJARAT

Appearance:

MR HV PUJARA for Petitioner
MR JM THAKORE, Advocate General, with
MR PREMAL JOSHI, AGP for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 22/08/2000

ORAL JUDGEMENT

#. The petitioner, who was at the relevant time serving as a Secretary, Gujarat Legislature Secretariat, challenges the alteration made in the order of his

promotion as Secretary, Gujarat Legislature Secretariat, by making it effective from 6th January, 1989, under the Notification dated 27th October, 1989, at Annexure-D to the petition instead of 29th December, 1987, from which date he had been promoted by the Notification dated 6th January, 1989 at Annexure-C to the petition. A declaration is also sought that the post of Secretary, Legislature Secretariat is equivalent to the post of Chief Secretary and that the Secretary, Legislature Secretariat, should be paid the pay-scale and all other benefits available to the Chief Secretary to the Government. When this petition is called for hearing, the learned counsel for the petitioner states that the petitioner does not press for the other reliefs pertaining to the authority of the Governor in the matter of appointment etc. of the officers of Legislature Secretariat. It is also made clear at the outset that though equivalence of the post of Secretary, Legislature Secretariat, has been sought with the post of Chief Secretary to the Government, the petitioner in reality wanted the post to be equated with the post of Secretary in the State Secretariat.

#. The record discloses that the petitioner was initially in-charge of the post of Secretary, Gujarat Legislature Secretariat, with effect from 29th December, 1987 forenoon when Mr.J.M.Parikh, who was earlier working on this post, was relieved to enable him to join his duty as Judge, City Civil Court, Ahmedabad. The Notification dated 6.1.1989 which is at Annexure-C to the petition shows that in exercise of the powers conferred by Rule 8(1)(i) of the Gujarat Legislature Secretarial Staff (Recruitment & Conditions of Service) Rules, 1974, the Governor of Gujarat, after consultation with the Speaker, Gujarat Legislative Assembly and the Gujarat Public Service Commission, had directed that the petitioner who was working as Deputy Secretary in the Legislature Secretariat, be promoted and appointed as Secretary of the Legislature Secretariat with effect from 29th December, 1987, i.e. the date from which he was holding the charge of that post. However, thereafter on 27th October, 1989, the Notification came to be issued as per Annexure-D to the petition by which the earlier Notification dated 6.1.1989 was modified and it was ordered that the petitioner be promoted and appointed as Secretary of the Legislature Secretariat with effect from 6.1.1989.

#. In the affidavit-in-reply which has been filed by the State Government, it has been stated in paragraph-20(g) that the Government came to know about retrospective

promotion of the petitioner from 29.12.1987 only when it received the letter dated 25.1.1989 from the G.P.S.C. by which the G.P.S.C. wanted to know as to how the petitioner was retrospectively promoted when no such proposal was received from the Governor and the G.P.S.C. had not concurred with any such proposal. It is also stated in sub-paragraph (h) of paragraph-20 of the reply that the Hon'ble Governor had confirmed that he had accorded approval for grant of promotion to the petitioner with prospective effect only and therefore, the Hon'ble Governor thereafter directed the Legislature Secretariat to cancel the Notification dated 6.1.1989 and issue a fresh one for promoting the petitioner with effect from 6.1.1989.

#. Apart from the fact whether there was a valid ground for altering the earlier order by changing the petitioner's date of promotion, it is clear that once the petitioner was promoted by the Notification dated 6.1.1989 with effect from 29.12.1987, being the date from which he was in-charge of the post in question, it was incumbent upon the authorities to have heard the petitioner before making any order which worked adversely against the petitioner by virtue of his date of promotion being changed from 29.12.1987 to 6.1.1989. Admittedly, the petitioner was never heard before the making of such an adverse order. In fact, there was already a mention in the Notification dated 6.1.1989 about the Governor having consulted the Speaker and the G.P.S.C. while promoting and appointing the petitioner as Secretary with effect from 29.12.1987. However, even if that Notification did not reflect the correct state of affairs, the petitioner was entitled to know and be given an opportunity of being heard before any adverse decision was taken against him by shifting his date of promotion to 6.1.1989. The impugned action of altering the earlier date of promotion of the petitioner from 29.12.1987 to 6.1.1989 under the Notification at Annexure-D to the petition cannot therefore be sustained. The concerned authorities of the respondent can take such a decision only after hearing the petitioner.

#. As regards the claim of the petitioner that his post of Secretary, Gujarat Legislature Secretariat, was equivalent to the post of Secretary in the Government Secretariat and therefore the pay-scale which was applicable to the post of Secretary in the Government Secretariat should be extended to the petitioner, gains some support from the Resolution dated 17.2.1998 which has been shown to the Court and placed on record when this matter is called out for hearing. That Resolution

bearing No.E/2(5)/889 dated 17.2.1998 has been issued in the name of the Governor of Gujarat by the Gujarat Legislature Secretariat and it reads as under:

"RESOLUTION:

The pay scale of Rs.5300-6200 for the post of Secretary, Gujarat Legislature Secretariat is prescribed vide G.L.S. Notification No.E-2(5)/18970 dated 27.11.1987. The pay-scale for the members of the corresponding grade i.e. Secretary (Non I.A.S.) in the Civil Secretariat of Government is Rs.5900-6700, which is higher than the pay-scale prescribed for the Secretary, Gujarat Legislature Secretariat. The functions and the responsibilities involved for the post of Secretary, Gujarat Legislature Secretariat is more or less equivalent to the functions and responsibilities of the members of corresponding grades in the Civil Secretariat of the Government. An element of anomaly in the pay-scale between two equivalent posts was under active consideration of the Governor for some time past.

Now, the Governor of Gujarat, in consultation with the Speaker, Gujarat Legislative Assembly, is pleased to prescribe the pay-scale of Rs.5900-6700 (Pre-revised Scale) w.e.f. 01.08.1997 as personal pay-scale for the present incumbent Shri K.M.Panchal till the Recruitment Rules for the post of Secretary, Gujarat Legislature Secretariat is amended.

This issues with the concurrence of Finance Department vide its letter No.PGR-1389-1640-M dated 16.02.1998.

By order and in the name of
Governor of Gujarat

sd/- D.M.Patel

(D.M.Patel)
Deputy Secretary
Gujarat Legislature Secretariat

It will be seen from the contents of this Resolution that the concerned authority found that the functions and responsibilities of the post of Secretary, Gujarat

Legislature Secretariat were more or less equivalent to the functions and responsibilities of the members of corresponding grades in the Civil Secretariat of the Government and that the anomaly in the pay-scales between two equivalent posts was under active consideration of the Governor, and the Governor in consultation with the Speaker, prescribed the pay-scale of Rs.5900-6700 (Pre-revised Scale) with effect from 1.8.1997 as personal pay-scale for the then incumbent Mr.K.M.Panchal till the Recruitment Rules were amended. These orders clearly give a ground to the petitioner for being similarly considered and treated for the equivalent pay-scale which he has been claiming. If the pay-scale of Secretary in the Government Secretariat has been given to the subsequent incumbent on the ground that the functions and responsibilities of the post of Secretary, Gujarat Legislature Secretariat and Secretary in the Civil Secretariat of the Government are more or less equivalent, then it follows that the pay-scale given to the said incumbent, though described as a personal pay, is relatable to the equivalence of functions and responsibilities of the two posts and is not based on any individual merit of that incumbent. It is described as personal pay-scale possibly because the Recruitment Rules were required to be amended. It would therefore be appropriate for the respondent-authorities to consider the case of the petitioner on the lines similar to the approach adopted in making the said Resolution dated 17.2.1998.

#. It is accordingly directed that the petitioner's case be reconsidered on the question of alteration in the date of his promotion after giving him an opportunity of being heard in that regard and, considered as regards the award of the pay-scale of the post of Secretary in the Government Secretariat as was done under the Resolution dated 17.2.1998 in respect of Mr.K.M.Panchal by the concerned authority who shall take an appropriate decision in accordance with law and in the light of the observations made in this Judgment, expeditiously. Rule is made absolute accordingly with no order as to costs.

.....

(sunil)